***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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W.P.No.6411 of 1996

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% 14.02.2006

Between:

D.Neetha W/o Venkateswar Rao
F.P.Shop deeler of shop No.71, Yellamagutta, Nizamabad
R/o Saraswathi Nagar, Nizamabad

..... PETITIONER

AND

1 The Joint Collector,
Nizamabad & others

.....RESPONDENTS

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! Counsel for the Petitioners: Sri V.Ravikiran Rao

^ COUNSEL FOR THE RESPONDENTS: G.P. for Civil Supplies

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> Head Note:

? CITATIONS:

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ORDER:

The Revenue Divisional Officer, Nizamabad, the 2nd respondent herein, issued notification, calling for applications for appointment of Dealers to various Fair Price Shops, in Nizamabad Town. The petitioner submitted her application. The 2nd respondent appointed the petitioner as dealer, for shop No.71. The petitioner was issued authorization, by the competent authority,
on 12-04-1994. Respondents 5 to 10 herein, who were not selected for any fair price shop, filed an appeal before the Joint Collector, Nizamabad, the 1st respondent, challenging the appointment of dealers to various fair price shops. The selected candidates were not made parties in the appeal. Through his order dated

20-02-1995, the 1st respondent allowed the appeal and set aside the appointment of the petitioner as well as several other dealers. He directed the 2nd respondent to conduct a test and select the candidates for the respective shops, on merits.

Petitioner filed W.P.No.4509 of 1995 before this Court, challenging the order dated 20-02-1995, passed by the 1st respondent. The writ petition was allowed on 26-09-1995, on the sole ground that the petitioner herein was not made a party, in the appeal before the 1st respondent. The matter was remanded to the 1st respondent for fresh consideration and disposal.

In pursuance of the orders of this Court in W.P.No.4509 of 1995, the 1st respondent took up the proceedings once again. However, he treated the petitioner herein as petitioner before him, in the appeal. He rejected the case of the petitioner, through his order dated 11-03-1996, on the sole ground that she did not appear in the oral test conducted by the 2nd respondent, in pursuance of the orders dated 20-02-1995, passed by him. He took the view that the 4th respondent herein must be appointed as the fair price shop dealer. The same is challenged in this writ petition.

Learned counsel for the petitioner submits that the very approach of the 1st respondent to the entire issue was contrary to law. He contends that the 1st respondent committed blatant irregularity in setting aside the appointment of the petitioner, without ensuring that she was impleaded as a respondent. Learned counsel submits that even after remand, the 1st respondent proceeded as though the petitioner filed an application before him, instead of re-hearing the entire appeal, preferred by the respondents 5 to 10. He finally urges that the ground, on which the 1st respondent denied the relief to the petitioner, is totally untenable.

Learned Government Pleader for Civil Supplies, on the other hand, submits that the 1st respondent took overall view of the matter, after remand, and passed the impugned order. He contends that the selection was made on appreciation of relative merit, and the same does not warrant any interference.

Though the 4th respondent is served with notices, she has not chosen to enter the appearance.

On account of lack of proper understanding, on the part of the incumbents, who held

the office of the 1st respondent, at the relevant points of time, or the indifference exhibited by them, in the matter of hearing and disposal of the appeals, the petitioner had to approach this Court, twice. The petitioner was selected as a dealer for shop No.71. In case, the other applicants felt aggrieved by the selection of the petitioner, it was open to them to prefer an appeal, duly impleading the petitioner herein. The 1st respondent entertained the appeal preferred by unsuccessful candidates, without even ensuring that the effected parties are impleaded.

A perusal of the order dated 20-02-2005, discloses that the 1st respondent allowed the appeal and set aside the selection of individuals, who are named therein. The petitioner was also referred to. This Court had set aside the order dated 20-02-1995, on finding that the effected parties, were not impleaded, and remanded the matter for fresh disposal.

In the remand, the 1st respondent ought to have ensured that the effected parties, including the petitioner, figure as respondents, in the appeal. Curiously, the 1st respondent proceeded as though the petitioner herein had approached him, through a fresh application, and arrayed her as a petitioner. While discussing the matter on merits, he has indirectly put a seal of approval on the order passed by him earlier, and took the result thereof, as a guiding factor.

In the first round while allowing the appeal, through order dated 20-02-1995, the 1st respondent directed the 2nd respondent to conduct a test, afresh for the candidates. Inasmuch as the appeal related to several shops, the 2nd respondent proceeded to conduct the oral test. The petitioner did not participate in it, because she challenged the order dated 20-02-1995, and her writ petition was allowed. It is rather surprising that the 1st respondent rejected the claim of the petitioner, on the sole ground that she did not participate in the subsequent oral test, conducted in pursuance of his order dated 20-02-1995. There cannot be any better instance of perversity and lack of basic understanding, than this. Had the writ petition been heard, at a time, when the same incumbent, who held the office of the 1st respondent dealt with the matter, this Court would have considered the feasibility of requiring him, to explain the extraordinary circumstances. However, it is being heard ten years after it is passed. This Court expresses its serious concern, and takes exception to the manner in which the respective incumbents, who held the office of the 1st respondent, dealt with the matter.

Hence, the writ petition is allowed, and the impugned order is set aside, in so far as it relates to the petitioner. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.14-02-2006.

Note:

L. R. copy to be marked.

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